

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

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WISCONSIN RESOURCES  
PROTECTION COUNCIL, CENTER  
FOR BIOLOGICAL DIVERSITY,  
AND LAURA GAUGER,

Plaintiffs,

Case No. 11-cv-45

v.

FLAMBEAU MINING COMPANY,  
Defendant.

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**DEFENDANT'S PROPOSED STATEMENT  
OF CONTESTED ISSUES OF LAW**

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The following issues of law remain undecided and are contested by the parties:

**Liability**

1. Whether events subsequent to the filing of this lawsuit have made it absolutely clear that the Clean Water Act violations alleged in the Complaint could not reasonably be expected to recur.
2. Where Stream C begins as a Water of the United States.
3. Whether the Biofilter overflow discharged directly into Stream C at a location where Stream C is a Water of the United States.
4. Whether the Biofilter overflow discharged into a wetland.
5. If the Biofilter overflow discharged into a wetland, does the wetland meet the significant nexus test as established in *Rapanos v. United States*, 547 U.S. 715 (2006).

6. If the Biofilter overflow discharged directly into a Water of the United States, on what days did that occur?

**Remedies**

1. Whether the Court should declare that Defendant Flambeau Mining Company (“FMC”) violated the Clean Water Act (“CWA”) by discharging pollutants into a Water of the United States in violation of 33 U.S.C. § 1311(a).

2. Whether the Court should enjoin FMC from discharging pollutants from the Biofilter to a Water of the United States unless authorized to do so under a permit issued pursuant to section 402 of the CWA.

3. Whether the Court should assess any civil penalties against FMC, and if so, for what amount.

4. Whether the Court has the authority in a CWA Citizen Suit to require FMC to fund a Supplemental Environmental Project, and, if so, whether the Court should do so.

Respectfully submitted this 15<sup>th</sup> day of May, 2012.

**DEWITT ROSS & STEVENS S.C.**

By: s/ Harry E. Van Camp  
Harry E. Van Camp (#1018568)  
Henry J. Handzel, Jr. (#1014587)  
Two East Mifflin Street, Suite 600  
Madison, WI 53703-2865  
608-255-8891  
**ATTORNEYS FOR DEFENDANT,  
FLAMBEAU MINING COMPANY**